

**CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (I-Bank)
501(c)(3) REVENUE BOND FINANCING PROGRAM**

STAFF REPORT

EXECUTIVE SUMMARY

Applicant:	The Bay Institute Aquarium Foundation (Foundation or Borrower)	Amount Requested:	Not to exceed \$9,000,000
Applicant Description:	A California non-profit corporation organized for the purpose of acquiring the Aquarium of the Bay located at Pier 39 in San Francisco, California.	Date of Board Meeting:	May 19, 2009
		Type of Issue:	New Issue
		Resolution Number:	09-20
Project Site:	Pier 39 – Embarcadero at Beach Street San Francisco, CA	Prepared by: Tara Dunn	
Project Description:	The project involves the acquisition of the Aquarium of the Bay (Project).		
Uses of Bond Proceeds:	Bond proceeds will be used to pay the costs of the Project including issuance costs and the cost of funding a debt service reserve.		
Public Benefits:	The Foundation seeks to implement a model of sustainable entrepreneurship; that is, generate a steady stream of revenue to fund, in addition to the continued operation of the Aquarium of the Bay, a variety of new environmental programs both at the Aquarium and through The Bay Institute of San Francisco. The Foundation expects to implement community outreach programs and events, such as providing free bus service for school groups from underserved communities, new membership programs, and partnerships with local schools and other interpretative centers to expand its outreach as well as offering pre- and post-visit curriculum for use by educators to enhance its conservation education programs. Additionally, the Borrower is certified as a “Green Business” by the San Francisco Green Business Program and estimates that approximately 70 full and part-time jobs will be retained.		
Financing Structure:			
Type of Issue:		Publicly-offered variable-rate demand bonds in minimum denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof.	
Tax Status:		Tax exempt 501(c)(3) bonds	
Term:		15 years	
Credit Enhancement:		Direct-pay letter of credit from Pacific Capital Bank, N.A. (operating as Santa Barbara Bank & Trust) with a confirming letter of credit provided by the Federal Home Loan Bank of San Francisco.	
Credit Rating:		Expected “AAA” by Moody’s based upon the credit rating of the Federal Home Loan Bank of San Francisco.	
Est. Sources of Funds:		Est. Uses of Funds:	
Par amount of the bonds	\$9,000,000	Project Acquisition	\$9,400,000
Subordinated Debt (Program related investment by Packard Foundation)	2,500,000	Working Capital	1,250,000
		Debt Service Reserve Fund	650,000
		Costs of Issuance	200,000
TOTAL SOURCES	11,500,000	TOTAL USES	\$11,500,000
Financing Team:			
Bond and Disclosure Counsel:		Holland & Knight LLP	
Underwriter:		Nollenberger Capital Partners	
Trustee:		US Bank N.A.	
Staff Recommendation:			
Staff recommends approval of Resolution 09-20 for an amount not to exceed \$9,000,000 for The Bay Institute Aquarium Foundation.			

BACKGROUND AND HISTORY

The Bay Institute Aquarium Foundation

The Bay Institute Aquarium Foundation (Foundation or Borrower) is a non-profit public benefit corporation established by The Bay Institute of San Francisco (Bay Institute) for the purpose of: acquiring the Aquarium of the Bay (Aquarium), a for-profit enterprise, located at Pier 39 in San Francisco; providing strategic and fiduciary oversight of the Aquarium and its programs; and managing and dispersing a portion of the San Francisco Bay Conservation Fund, a fund established by The Bay Institute of San Francisco to support Bay-related science, education and stewardship activities.

As a newly created entity, the Foundation has no operating history and no assets other than the existing aquarium facility that will be acquired. The Foundation will have no staff or employees and will operate the business through the Bay Institute or rely on its Board members or Board members of The Bay Institute for assistance (See Governance and Management below). Aquarium operations and programs are to be managed by John Frawley, the current chief executive officer of the existing aquarium facility and who is expected to remain in that position under Foundation ownership.

The Bay Institute of San Francisco

The Bay Institute of San Francisco is a non-profit public benefit corporation founded in 1981 that works toward the environmental restoration of the entire watershed which drains into San Francisco Bay (Bay), including the Sacramento River and the San Joaquin Rivers as well as their tributaries, Suisun Marsh, and San Pablo Bay. The Bay Institute uses a combination of scientific research, political advocacy, and public education to achieve its purpose.

The Aquarium of the Bay

The Aquarium of the Bay (Aquarium), is currently an operating for-profit aquarium that exclusively exhibits marine and terrestrial animals that live in and near the San Francisco Bay and local coastal waters. The Aquarium opened in April 1996. Known then as UnderWater World, it was one of the first in the United States to have underwater viewing tunnels. The steel and concrete structure cost approximately \$40 million to construct, including substantial renovation of Pier 39 and an extensive network of pylons driven 100 feet into the Bay floor for stability and safety.

In 2005, the Aquarium was put up for sale by its commercial investors, and the Bay Institute actively sought to buy the property but needed time to raise funds through a capital campaign. As a result, Kenwood Investments, through Kenwood Bay Aquarium, LLC, a single member limited liability company, stepped in to act as a bridge financier and offered the Bay Institute an option agreement to purchase the Aquarium at the below market price of approximately \$9 million (the Aquarium was recently appraised at \$18 million).

The Aquarium is currently associated with The Aquarium of the Bay Foundation, a 501(c)(3) corporation established in 2006 to focus on research, conservation and education about the Bay.

The Bay Institute spent the intervening time performing due diligence; procuring an economic feasibility analysis; establishing The Bay Institute Aquarium Foundation as a nonprofit corporation; developing a business plan; building community, corporate and foundation support; and raising funds through a capital campaign. As of December 2008, approximately \$1.1 million in grants and pledges has been raised by the fundraising campaign, including \$500,000 from individual donors. The AT&T Foundation has made an initial grant and Adobe Systems has made a commitment to support the new science and conservation education programs at the Aquarium.

The Aquarium is open to the public 364 days per year and, in 2008, nearly 570,000 visitors generated more than \$7.3 million in revenues and more than \$1.2 million in profits, according to Kenwood's audited financial statements. The Aquarium is the second most visited attraction on the San Francisco waterfront (after Alcatraz) and the third most visited attraction in the city (after Alcatraz and the cable cars) according to the San Francisco Business Times 2009 Book of Lists (excludes attendance at professional sporting events). The Aquarium is accredited by the Association of Zoos and Aquariums (AZA), America's leading accrediting organization for zoos and aquariums, and certified by the San Francisco Green Business Program as a "green business."

The Bay Institute Aquarium Foundation has adopted a strategic plan that provides a detailed framework for this acquisition and facility operations. The plan addresses issues relating to the economic downturn, competing attractions, and other factors that could affect revenues. The Foundation intends to broaden the purpose of the Aquarium and act as a conservation center providing programs to educate youths and adults that promote awareness of the importance of the Northern California watershed for the health and vitality of San Francisco Bay.

The collaboration of the Foundation and the Bay Institute is designed to achieve eight broad outcomes:

1. A Conservation Center for San Francisco Bay: The Aquarium will be the only dedicated science, education and conservation center for the Bay, its watershed and its estuary.

2. New Revenue for Science and Education: As a non-profit center, the Foundation intends to direct revenue to increase the number of school children visiting the Aquarium each year from 15,000 to 45,000. The Foundation will also work with schools to develop pre- and post-visit curricula to enhance the educational value of the visit, collaborate on joint programs with other Bay Area interpretive centers such as the Coyote Point Museum and Marine Science Institute, and provide free transportation for children from underserved communities.

3. New Funding to Support Bay Conservation: A portion of the profits dispersed by the Foundation to the San Francisco Bay Conservation Fund will support ecosystem restoration, environmental stewardship programs, public outreach, and other environmental initiatives to enhance awareness of watershed preservation issues.

4. New and Improved Exhibits: A portion of the Aquarium profits will be used to update existing exhibits, develop new high-tech, interactive exhibits, and expand the Aquarium's

reach with new web-based and traveling exhibits that bring the Aquarium to schools, and other interpretive centers throughout northern California.

5. A New “Central Address” for the Bay: Building on the existing broad community support, Foundation will:

- Facilitate interaction among scientists, teachers, environmental groups and government agencies on behalf of the Bay;
- Sponsor and host educational and scientific events, workshops and conferences, including a new monthly Bay Lecture Series; and
- Provide a venue for regional environmental groups, academic institutions and research organizations.

6. Transformation of the Waterfront: The Foundation intends to transform a tourist area to a destination for residents and visitors alike.

7. Expanded Outreach and Public Engagement: The Aquarium will establish enhanced membership programs, as well as partnerships with local schools and other interpretative centers.

8. Enhanced Fundraising Capacity: The acquisition will place the Foundation and the Bay Institute in a stronger position to compete for operating grants, and garner local support for the Aquarium, now perceived by residents as primarily a tourist venue. Because of reduced investment earnings, several foundations indicated that they have no capacity this year for new projects, and current funders indicated their support could be reduced this year, but would be restored for future grant proposals. Further, capital campaigns achieve goals faster once donors perceive that the project is progressing successfully.

GOVERNANCE AND MANAGEMENT

The Foundation is governed by a five-member Board of Directors appointed by the Bay Institute’s Board of Directors. The governance structure is designed to ensure the financial and functional independence of the Bay Institute and the Foundation while creating the framework for the Foundation to provide financial support to the Bay Institute and for the two institutions to jointly build and expand their programmatic work in science, education and environmental stewardship. As noted above, Aquarium operations and programs are to be managed by the Aquarium’s current Chief Executive Officer, John Frawley a 19-year veteran of aquarium administration. Mr. Frawley has been instrumental in the steady increase in profitability and in securing accreditation by the American Association of Zoos and Aquariums. An organization chart illustrating the governance and management structure of the partnership between the Foundation and Bay Institute is contained in Appendix A.

Foundation’s Board of Directors	
Steven N. Machtinger	President
Harvey Glasser, MD	Chief Financial Officer
Carol K. Lind	Secretary
Robert Charles Friese	Member
M. Morgan Rissel	Member

Bay Institute's Board of Directors			
Carol K. Lind	Chair	Harrison C. Dunning	Member
Nick Wilcox	First Vice Chair	Robert J. Erickson	Member
Steven N. Machtinger	Second Vice Chair	Michael Law	Member
Karen E. Losee	Secretary	Derry Henderson	Member
Nancy Carlson	Treasurer	Morgan Rissel	Member
Andrea Biren	Member	Nancy Werner	Member
Marcia Brockbank	Member	Arlene Wong	Member

PROJECT DESCRIPTION

Proceeds will be used to finance the acquisition of the Aquarium of the Bay (Aquarium), a commercial aquarium located on Pier 39 of the San Francisco waterfront that is currently owned by Kenwood Bay Aquarium, LLC, a single member limited liability company.

The Aquarium consists of a 65,000 square foot facility with two main aquariums holding 700,000 gallons of filtered Bay water. The aquariums contain approximately 300 feet of clear acrylic tunnels running through them for visitors to view marine life. The building also includes three touch pools, a variety of smaller tanks and other displays, a meeting room for classes and other events, an outdoor patio adjacent to the meeting room, two gift stores, and access to a docking pier adjacent to the Aquarium. Administrative offices for the Aquarium are also located within the Aquarium building. The Aquarium is accredited by the Association of Zoos and Aquariums and certified by the San Francisco Green Business Program as a "green business."

The purpose of this project is for the Foundation to exercise its exclusive option to purchase the Aquarium from its current owner at a below market price.

The Aquarium is located on property owned by the Port of San Francisco (Port). The Port leases Pier 39 to a private investment group, Pier 39, L.P. under a master lease expiring in 2042. The Aquarium occupies its facilities under a sublease from Pier 39, L.P., which, upon the exercise of tenant options, extends through 2028. Pier 39 and its tenants are subject to regulatory oversight by the San Francisco Bay Conservation and Development Commission (BCDC), a California state commission. BCDC's permit requires the Aquarium to display only species native to the San Francisco Bay area and mandates the Aquarium to provide certain educational programs to local residents. The permit does not restrict ticket prices; however, it requires the Aquarium to offer senior and children's tickets at 50% of the regular admission price.

Additionally, the Aquarium must petition the BCDC for any leasehold improvements or structural changes to the facility. The sublease requires that Pier 39, L.P. cooperate with reasonable requests by the Aquarium to obtain BCDC consent for any reasonable leasehold improvements (i.e., new exhibits, additions to the Aquarium).

FINANCING STRUCTURE

The Bay Institute Aquarium Foundation is requesting approval for the issuance of bonds (Bonds) in an amount not to exceed \$9,000,000. Payment of principal and interest on the Bonds will be enhanced by a letter of credit provided by Pacific Capital Bank, N.A., operating as Santa Barbara Bank & Trust in addition to a confirming letter of credit provided by the Federal Home Loan Bank of San Francisco to be executed simultaneously with the issuance of the Bonds. It is expected that the Bonds will carry a rating of “AAA” from Moody’s Investors Service, based upon the Federal Home Loan Bank of San Francisco’s credit rating.

In no event shall the Bonds constitute a pledge of the faith and credit of the State or any political corporation, subdivision or agency of the State, and neither the State nor any political corporation, subdivision or agency of the State shall be liable to make any appropriation for the repayment of the Bonds. The Bonds constitute a special obligation of the I-Bank, payable solely from revenues consisting of repayments of the loan provided for in a loan agreement between the I-Bank and the Foundation, and other funds held by the Bond Trustee.

PUBLIC BENEFITS

As part of its mission, the Foundation has a strong education initiative and anticipates an increase in teachers and educational institutions interested in scheduling group visits. Approximately 15,000 school children currently visit the Aquarium each year which the Foundation intends to increase substantially. The Aquarium currently offers free visits to a limited number of local school children and will establish new enhanced membership programs, as well as partnerships with local schools. Free bus transportation will also be provided for school groups from underserved communities.

The Foundation will also work with schools to provide pre- and post-visit curricula to enhance the educational value of the visit and collaborate on joint programs with other Bay Area interpretive centers such as the Coyote Point Museum and Marine Science Institute.

A portion of the profits dispersed by the Foundation to the San Francisco Bay Conservation Fund will support ecosystem restoration, environmental stewardship programs, public outreach, and other environmental initiatives to enhance awareness of watershed preservation issues operated by The Bay Institute of San Francisco.

As a result of the recent economic downturn, no new jobs are expected to be created, however the Foundation anticipates that it will retain the existing Aquarium management team and core staff consisting of approximately 70 employees. Aquarium monthly attendance has historically varied inter-annually, with its highest during the summer tourist season. In contrast, participation in the Aquarium’s existing education programs by local school children is higher during the school year than during the summer. Because of this, staffing levels for naturalists, interpretive staff and education program staff vary accordingly and in some cases internships may be utilized to meet these seasonal needs.

The Aquarium is certified as a "Green Business" by the San Francisco Green Business Program and demonstrates its commitment to conservation through:

- Use of hands-free motion sensors in public restrooms.
- Following the Seafood Watch sustainable seafood choices for seafood purchasing.
- Using Green Cleaners for housekeeping supplies.
- Printing marketing materials with soy ink on 50% PCW paper.

OTHER PROJECT DATA

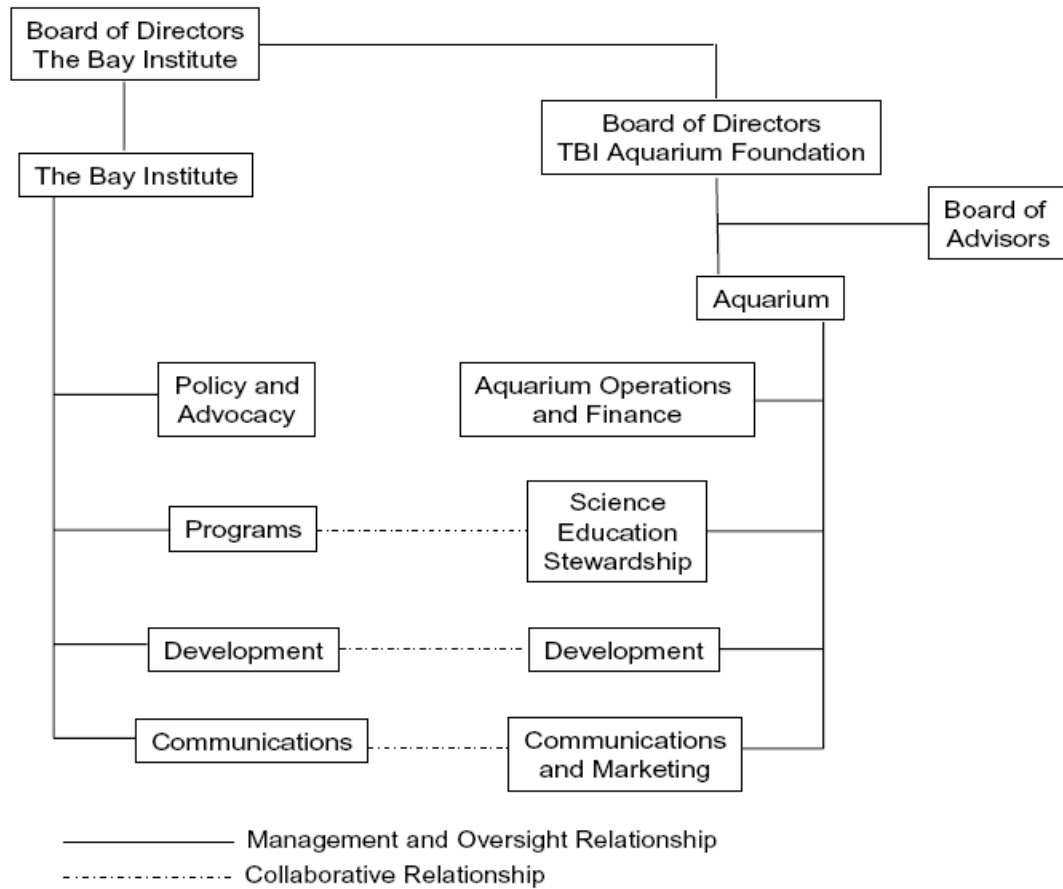
PERMITS AND APPROVAL	
Required?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, Describe: No permits are required for the acquisition of an existing facility.
TEFRA	
Date of TEFRA	May 18, 2009
Publications	<i>The Sacramento Bee on May 1, 2009</i> <i>San Francisco Chronicle on May 4, 2009</i>
Oral/Written Comments Received	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, Explain:
LEGAL QUESTIONNAIRE	
Completed?	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES
Issues?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, Explain:
ELIGIBILITY REVIEW	
Project meets Public Interest Criteria (per G.C. § 63046 and 63047(d)) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<ol style="list-style-type: none"> 1. The Project is in the State of California. 2. The Foundation is capable of meeting its obligations incurred under the proposed loan agreement, and, in particular as to its loan repayment obligations which secure the bonds, as a result of providing a direct-pay letter of credit from Santa Barbara Bank & Trust as well as a confirming letter of credit from the Federal Home Loan Bank of San Francisco, which is the basis for the anticipated rating on the Bonds. 3. Payments to be made by the Foundation to the I-Bank under the proposed loan agreement are adequate to pay the current expenses of the I-Bank in connection with the financing and to make all the scheduled payments on the Bonds. 4. The proposed financing is appropriate for the Project. 5. The Project is consistent with any existing local or regional comprehensive plans.
The Project meets the Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities established as guidelines for I-Bank Staff by the Board: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
INDUCEMENT CERTIFICATE	
Completed?	<input type="checkbox"/> NO <input type="checkbox"/> YES Certificate No.: <input checked="" type="checkbox"/> N/A Date:

RECOMMENDATION

Staff recommends approval of Resolution 09-20, for an amount not to exceed \$9,000,000 for The Bay Institute Aquarium Foundation.

APPENDIX A—Organization Chart

Governance and management structure of the partnership between the Bay Institute and the Foundation.



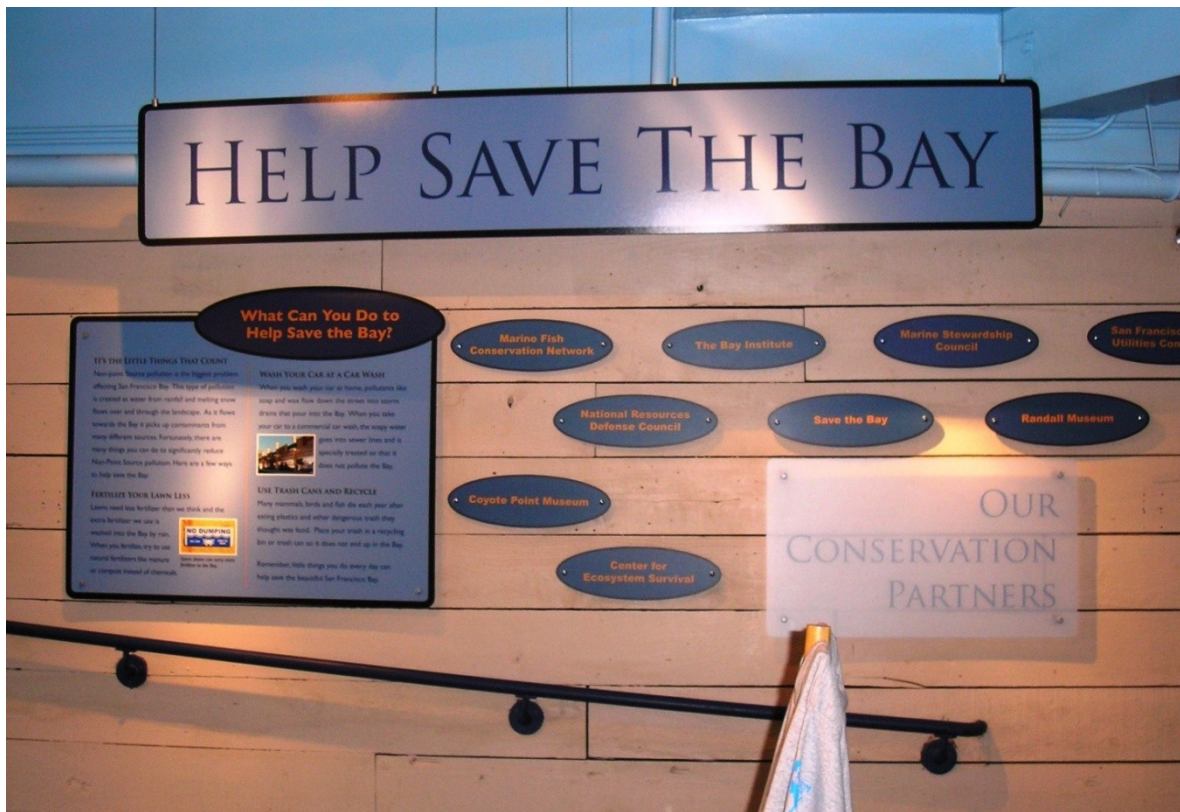
APPENDIX B—Project Pictures



Ticket Booth and escalator from Pier 39 entrance.



Aquarium Gift Shop entrance



Conservation Partners of the Aquarium



Aquarium Building